

## TESTIMONY OF JOHN VANBIESBROUCK

Chairman Meadows, members of the Committee, my name is John Vanbiesbrouck, and I am testifying today on behalf of the members of the National Hockey League Players' Association. I am accompanied by Mike Ouellet, who is an attorney and also serves as the Association's Chief of Business Affairs. I am also joined by several other current hockey players, all of whom share the concerns you are hearing today.

I am a retired professional hockey player. I played in the National Hockey League between 1981 and 2002. I was born in Detroit and live there today. I played 882 NHL games with the New York Rangers, Florida Panthers, Philadelphia Flyers, New York Islanders, and the New Jersey Devils. In 1986, I won the Vezina trophy for best goaltender in the NHL and was inducted to the U.S. Hockey Sports Hall of Fame in 2007.

As is true with the other players testifying today, I am concerned about the impact House Bill 5964 will have not only on hockey players and other professional athletes, but also on amateur athletes, retired athletes, entertainers, authors, academics, legislators, businessmen, literally anyone who is in the public eye or who captures the public's attention. Today, under Michigan law, we enjoy a right of publicity, the ability to protect our name, likeness, and goodwill from being commercially exploited without our permission.

Consequently, the test of whether I would support this bill is relatively simple. The issue boils down to two basic questions. First, if

House Bill 5964 is enacted, will a right I currently enjoy in this state be preserved? Unfortunately, under the bill, the right of publicity currently available to everyone who lives in this state would be all but eliminated.

This outcome is not consistent with current law. While I am not a lawyer, the law does not seem to be that complicated. Currently, in Michigan, we are all protected against someone else, without our permission, using our name, image, and likeness to make money. Put another way, the courts in Michigan have ruled that each of us should have control over who gets to profit from the selling of our name and life's work. If House Bill 5964 is enacted, we will no longer enjoy the same protection.

I understand that the written testimony the four associations are submitting today provides the names of the cases where this right and its protection are discussed in great detail.

Consider, if you will, what the bill will mean on a more personal level. I don't think a video game company should be free to use Chris Chelios' or Brian Rafalski's name and image in one of their games in order to increase sales, without his permission. I don't think a handful of companies should have more rights when it comes to the image, likeness, and reputation of Mike Modano than Mike does. How is it fair that Ryan Miller will have a right of publicity while playing for Buffalo, where he is protected by New York State law, but his younger brother Drew will have no comparable right because he currently plays for the Red Wings.

As currently drafted, in every example I just gave, House Bill 5964 stands for the opposite outcome. In every instance, the legislation protects

the interests of the commercial enterprise, the foreign manufacturer, the marketing company and not the interests of the individual.

This leads to the second question? Why? Why is it necessary for this state to take away my right to my name? Is someone benefiting from my loss? Is it the state, or a charitable organization, or is there some greater social purpose being served. Or, are the people who would profit from my loss, from the exploitation of my name, image and goodwill without my permission, simply a narrow group of commercial businesses, primarily video game and souvenir manufacturers?

The bill seems to stand for the proposition that a company's interest in making money off of my name is more important than my own interest. I understand that under the law, my right to control the use of my name, my likeness, my career is considered to be a kind of property right. That being the case, what the bill is basically saying is that I may own my home but from now on, the kitchen can belong to someone else. I will have no say who owns it or what they do with it. How is that fair?

I hope all of you appreciate that a player's right of publicity, the right to protect and control the use of his or her image, reputation, likeness and life is not some abstract legal concept. This is an issue that has been at the heart of labor negotiations between the leagues and the player associations for decades. In hockey, we went on strike to preserve our right to exercise control over the use of our image and likeness. Imagine that – I had to go on strike to make sure I could control how my own name and image could be used. The bill would reach back and overturn those negotiated gains. It would also toss out the current balance between federal protection of

teams and the state protection of players. This is so because one would still need to get consent from the teams to use their logos but would no longer need my consent to use my image.

Before you vote on this bill, I hope you will ask yourself the following: would you want someone to do to you what you are being asked to do to me? Would you want someone else to be free to sell your name and image without your permission? Do you really believe that the only way for our state to recover is to sacrifice the names, character and integrity of those who, through sacrifice, hard work, and God-given talent, have achieved some celebrity?

Chairman Meadows, members of the Committee, I appreciate the opportunity to testify today on behalf of myself, my family and the other members of the National Hockey League Players' Association. And, I will be happy to answer any questions you may have. Hopefully, between Mike Ouellet and myself, we will be able to provide you with the answers you need.